**OCB AWARD NUMBER: 2170**

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| **SUBJECT:** | **ARB SUMMARY # 2170** |
| **TO:** | **ALL ADVOCATES** |
| **FROM:** | **DAVID LONG** |
| **OCB GRIEVANCE NUMBER:** | **25-20-20120213-0001-01-14** |
| **DEPARTMENT:** | ODNR – Office of Information Technology |
| **UNION:** | OCSEA |
| **ARBITRATOR:** | Robert Brookins |
| **GRIEVANT NAME:** | Norman Spellman |
| **MANAGEMENT ADVOCATE:** | Richard Corbin |
| **2ND CHAIR:** | Jacqueline Milsom |
| **UNION ADVOCATE:** | Tim Rippeth and Treva Knasel |
| **ARBITRATION DATE:** | April 18, 2012 |
| **DECISION DATE:** | June 14, 2012 |
| **DECISION:** | MODIFIED |
| **CONTRACT SECTIONS:** | Article 24.01—Standard Discipline; Article 24.02––Progressive Discipline |
| **OCB RESEARCH CODES:** | 118.6481 – Dishonesty in General; 118.01 – Discipline in General; 118.301 – Progressive Discipline |

**HOLDING: Grievance modified. The Arbitrator found the Grievant had culpable knowledge when he used information on a CD to prepare for a job interview and found those actions constituted misconduct within ODNR’s rules and guidelines. Due to the Grievant being a 25 year employee with no prior disciplines and outstanding performance scores, the discipline imposed by Management was modified by the Arbitrator to the Greivant’s reinstatement without back-pay, and a two (2) year last chance agreement.**

The Grievant was removed from an Information Technologist 3 position at the Department of Natural Resources (DNR) – Office of Information Technology (OIT), for violating Disciplinary Guidelines: 1 – Failure of Good Behavior and 19 – Intentional misuse or disclosure of confidential information or material. The Grievant was a 25 year employee with no prior disciplines and an “Outstanding” performance record. The Grievant was removed after an investigation determined that misconduct took place due to the Grievance attaining a perfect score on an evaluative interview for an Infrastructure Specialist 2 within DNR – OIT. More specifically, the Grievant received a CD with the questions and answers of the interview on it.

Management’s arguments for upholding the removal were centered around the fact that the Grievant admitted to being in possession of a CD with information on that *could* assist him in the job interview. Management states that the Grievant came into ownership of interview information through illicit means – namely through someone accessing the interviewer’s computer remotely and copying the questions and answers of the interview onto a CD. Management cites the Grievant’s nearly identical answers to the interview answers are evidence which shows that the Grievant had access to the interview information prior to the interview. Management also cites the Grievant’s admission of: 1) receiving interview information prior to the job interview and 2) destroying the CD that the interview information was on after he had memorized the answers and before the investigation began. Management felt that the Grievant’s admission to the previously mentioned two items during an investigatory interview coupled with the Grievance’s perfect score on the job interview was enough evidence to justify that misconduct was committed which warranted removal.

The Union argues that Management stacked the charges against the Grievant and removed the Grievant for other than just cause. The Union argues that the Grievant received the CD from a coworker, and was under the impression that the information on the CD was public and ethically obtained. The Union states that multiple parties were involved in a “cover-up” of the interview information being leaked and the Grievant took the fall. The Union also states that it is common knowledge that in OIT interview questions and answers were not secret or secure and that this information has been shared in the past to other employees preparing for job interviews.

The Arbitrator found that the Grievant did in fact obtain information that was inappropriate and constituted a violation of Disciplinary Guidelines 1 & 19. The Arbitrator states that the Grievant’s intentional misuse of inappropriate materials to study for an interview examination was dishonest. The Arbitrator emphasizes the Grievant’s position as an I.T. 3 put the Grievant in a highly visible position and this position assumes a substantial amount of trust from Employer. However, due to the Grievant’s 25 year employment without any previous disciplines and exemplary performance record, the Arbitrator modified the discipline. The Arbitrator reinstated the Grievant with no back-pay subject to the Grievant signing a two year last chance agreement.